
BOOK REVIEWS

LAW AND THE LAWYERS — *Edward S. Robinson. The Macmillan Company, New York City. 1935*

In this book Edward S. Robinson, professor of psychology at Yale University, undertakes the Herculean task of reducing law to a psychological and sociological science. It is time, he urges, for the law men to realize that every legal problem involves human beings and is essentially a conflict of human interests. It is impossible to separate law from psychology by the setting up of arbitrary rules. The law has met some of its greatest theoretical problems by assumptions regarding human nature which obviously are false. "Instead of showing law students how natural it is that juries have tended to be lenient towards sick men and pretty women, such matters have been treated as unfortunate accidents which have no real relationship to the legal process."¹ There is, too, much fiction in law and not enough fact.

Lawyers do not look with favor upon one who brings forth such progressive ideas. They rush to the defense of their technique with characteristic conservatism. For centuries the lawyers have applied their own methods and have shrouded them with theories and fictions which the laymen cannot and must not understand. Old-fashioned ideas of precedent, the "reasonable man," and similar concepts must now give way to a new philosophy—a philosophy based on fact, experience and understanding. "What will be required of the new juristic philosophy is a kind of intellectual leadership that will teach people how to discard old ideas when experience plainly proves those ideas to be wrong or futile."² In examining opinions a fact-minded jurisprudence will take into account the psychological, sociological, and economic details of the particular case as well as the background of the court in relationship to the case at bar. Looked upon in this light it will become unnecessary for judges to base their decisions upon precedents or legal theories chosen to justify the result which they want to reach.

Professor Robinson acknowledges the efforts made by the realists who have recognized the psychological basis of a great deal of our law. Their chief problem in his opinion has been to discover a school of psychological thought broad enough to follow and this is just about im-

¹ p. 52.

² p. 56.

possible. It will be necessary for the lawyer to become sufficiently schooled in psychology to pick for himself an adequate theory. The jurist will have to be his own psychologist.

A general picture of the process of individual deliberation is made an important and most interesting part of the book. The author presents a naturalistic³ picture of the judicial process. The opinions of judges offer an excellent field for psychological study even though the words and reasons used are chosen subsequent to the conclusion reached. Frequently the attitude, and sometimes the motives which prompted a decision, can be read into such opinions. There follows a discussion of the motives of deliberation and the search for the rule of a case. Professor Robinson makes clear that he is merely attempting to point out the psychological problems that present themselves as soon as one assumes an empirical attitude toward juridical study. He does not pretend to solve these problems summarily.

There is a great deal to be said for a book promulgating a viewpoint as progressive as this. The thinking man cannot but agree that legal conflicts are human conflicts; that judges are human; and that psychology enters into every phase of law. Frequently the long juristic opinion, though technically complicated, is a personal expression of an attitude toward a particular issue. No doubt psychology can be over-emphasized; but where the fields of psychology and jurisprudence come together, the law should not ignore the union.

An immediate reform of the legal system on the basis of psychology is of course impossible. Lawyers will protect their vested interests in "hocus-pocus" to the very limit—all the more strongly because they will realize the importance and merit of the naturalistic movement. The obstacles will be numerous and the progress slow; but there will be progress.

It is doubtful whether this book will be popular with any except those persons who have a deep interest in legal philosophy. Never light reading, legal philosophy impregnated with psychological principles is not rendered less ponderous; nor is any attempt made to make it less difficult to read. However, the latter portion of the book, made up of concrete examples of the judicial process, is not only easy reading but genuinely interesting. Perhaps this enhances the general theme promulgating the naturalistic approach.

The book is particularly recommended to law students and young lawyers not only because they must be the driving force behind new ideas, but because so many of them are not acquainted with this element

³ True to fact.

of the law. Such subjects are carefully avoided in our most progressive law schools. Students in whom a responsive chord is struck will find a wealth of footnote references bearing on the subject.

DONALD J. HOLLINGSWORTH

PRECEDENT IN ENGLISH AND CONTINENTAL LAW—*A. L. Goodhart. Stevens & Sons, Ltd., London, Eng., 1934*

In this book Professor Goodhart sets out to compare the merits of the common law doctrine of binding precedent with the continental theory of precedent established by practice.

Becoming particularly interested in the question of just what are the arguments in support of the English system Professor Goodhart discovers that for the most part he can agree with none of them. He does give one justifiable reason for the common law doctrine and that was the early need for certainty in the law of England. This need was not so crying in continental countries for there, even before the Codes, there was the background of Roman law which furnished a legal system of developed doctrines.

In building up a body of law there is a great need for certainty; there must be firm principles upon which the framework rests. This need for certainty in the development of the English law gave rise to the theory of binding precedents, for the entire job of construction was thrown upon the English judges. Precedents were the nails with which the English legal edifice was held together.

It would seem then that if any other binding force is present precedent does not become important unless it would be to bolster up the weak places in the structure. On the Continent the Codes were developed and thus formed a framework for law. The theory of precedent was not necessary but where a general practice developed under the Codes precedent eventually fixed that practice.

Professor Goodhart then takes issue with Mr. W. M. Best who assumes that if the English law were codified, the common law doctrine of precedent would be the better method of interpretation. This is hardly true he maintains, for to impose upon the statutes a doctrine of strict interpretation would soon make them inflexible.

Professor Goodhart then indicates that English law is codified to a far greater degree than most people realize; and claims that the binding precedent theory of interpretation is no longer a good one. His respect for the important part which precedent played in the development of English law is perhaps the only thing which prevents Professor Good-